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THIRD CONFERENCE ON THE LAW OF THE SEA

PROVISIONAL

For participants only

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11 July 1974

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Second Session

SECOND COMMITTEE

PROVISIONAL SUMMARY RECORD OF THE SECOND MEETING

Held at the Parque Central, Caracas,
on Tuesday, 9 July 1974, at 9.55 a.m.

Chairman:

Mr. AGUILAR

Venezuela

Rapporteur:

Mr. NANDAN

Fiji

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Territorial sea

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TERRITORIAL SEA (A/9021 (vol. IV); A/CONF.62/29; A/CONF.62/C.2/L.2 and L.3)

The CHAIRMAN said that in accordance with the decision taken at its first meeting, the Committee would begin its substantive consideration of the items listed on page 4 of document A/CONF.62/29 with item 2 - the territorial sea. As had been agreed, there would be a short general debate on each item. He recalled that the Committee had decided to appeal to all delegations to use self-discipline so as to keep the general debate as short as possible; as a general rule, only those delegations which had not taken part in the work of the Sea-Bed Committee or which had since changed their views should speak in the general debate; the Committee was to work in a flexible manner, and in the debate on any given item delegations might refer to other related items.

He noted that the Sea-Bed Committee had done considerable preparatory work on the question of the territorial sea and he drew attention to the various draft articles relating to item 2.1 which appeared on pages 3 and 4 of volume IV of the report of the Sea-Bed Committee (A/9021). Three broad trends emerged from those articles: firstly, the traditional concept of the territorial sea as the zone adjacent to the coasts and internal waters of a coastal State, over which that State exercised full sovereignty subject only to the right of innocent passage through the territorial sea and the air space above it; secondly, the concept of "national ocean space" over which the coastal State had jurisdiction; thirdly, the proposal that each coastal State should be free to decide the limits of its territorial sea and to exercise sovereignty up to a limit of 200 nautical miles, a limit within which the coastal State would be able to establish various régimes and might even decide not to exercise its full sovereignty.

He invited delegations to comment on the item and noted that the Committee's initial aim was not to draw up final texts but to define substantial areas of agreement.

Mr. TUNCEL (Turkey) suggested that in future the Journal should indicate the items to be taken up at meetings of the Committee and should give details of the relevant documents.

The CHAIRMAN said that there would be no difficulty in complying with that suggestion. The Journal had not given details of documents for the current meeting because at its previous meeting the Committee had decided that all documents could be discussed.

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Mr. JAGOTA (India) said that in his delegation's view the definition of the nature and characteristics of the territorial sea should be simple and neutral, taking account of the major concerns of all countries. He wished to submit a draft text of article 1, which was similar to the United Kingdom proposal (A/CONF.62/C.2/L.3). His country thought that the territorial sea should be small rather than large; if the question of the economic zone was satisfactorily settled, the Indian proposal might receive general support. The text, which he would submit formally in writing to the Secretariat, was the following:

"The sovereignty of a State extends beyond its land territory, and its internal or archipelagic waters, to a belt of sea adjacent to its coast, described hereinafter as the territorial sea.

"The sovereignty of a coastal State extends also to the air space over the territorial sea as well as to the sea-bed and subsoil thereof.

"The coastal State exercises its sovereignty in and over the territorial sea subject to the provisions of these articles and to other rules of international law."

Mr. DJALAL (Indonesia) suggested two amendments to the Indian text: the second paragraph should include a specific reference to the sovereignty of the coastal State over water columns and a reference to its sovereignty over the resources of the territorial sea.

Mr. JAGOTA (India) said that the amendments were acceptable to his delegation and suggested that the second paragraph should be reworded to read: "The sovereignty of a coastal State extends to the air space over the territorial sea, and to the sea, the sea-bed and subsoil thereof, as well as to their resources." That wording made it clear that the reference to resources did not relate to the air space.

Mr. SANTISO GALVEZ (Guatemala) asked whether it was in order for the Committee to consider the Indian text and Indonesian amendments before having them in writing.

The CHAIRMAN said that the proposals would not be considered until they had been circulated in writing. The purpose of the current discussion was to present ideas.

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Mr. ZOTIADES (Greece) said that his delegation found the Indian proposal acceptable although it had some hesitation regarding the second paragraph, which it found misleading. He therefore proposed that the second paragraph of the Indian proposal should begin with the words "The sovereignty over the territorial sea of a coastal State extends ...".

Mr. VALENCIA RODRIGUEZ (Ecuador) endorsed the points made by the Chairman in his statement concerning methods of work. His delegation was in favour of the procedure outlined in paragraph (3) of document A/CONF.62/C.2/L.2. All proposals should be circulated in the different working languages before they were considered.

Mr. POLLARD (Guyana) said that his delegation intended to submit a formal proposal for the formulation of the first paragraph of an article concerning the territorial sea. The proposed text would read:

"The jurisdiction of a coastal State extends beyond its land territory, including its internal and archipelagic waters, to an area of adjacent ocean space up to a seaward limit of 200 nautical miles."

The article would then define jurisdiction in respect of the 12-mile limit, the contiguous zone, the 200-mile limit, and so forth. His delegation believed that that proposal would both surmount the problem of terminology and reflect the sense of the discussions so far.

Mr. MBAYA (United Republic of Cameroon) said that he would like a clarification concerning the proposed methods of work. The question of the territorial sea raised problems of various kinds; yet the Chairman in his opening statement had addressed himself to only some of those problems.

The CHAIRMAN pointed out that, in accordance with paragraph (3) of document A/CONF.62/C.2/L.2, the Committee was to consider the items allocated to it one by one in the order in which they appeared in document A/CONF.62/29. Consequently, in his introductory statement he had referred to the various types of proposals concerning item 2.1, "Nature and characteristics, including the question of the unity or plurality of régimes in the territorial sea". The proposal submitted by the Indian delegation reflected one of the trends he had described.

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Mr. RASHID (Bangladesh) asked whether consideration of the baseline from which the breadth of the territorial sea would be measured would be included in the discussion of item 2.

With regard to the Indian proposal, he suggested that a more precise word should be found to replace "adjacent" in the first paragraph, and that the words "other rules of international law" in the third paragraph should also be replaced by a more specific formulation.

Mr. TUNCEL (Turkey) said that if the Indian delegation submitted its proposal formally, his delegation would submit an amendment proposing that reference should be made to archipelagic States in the first paragraph.

The CHAIRMAN, replying to a question put by the representative of Turkey, said that the United Kingdom delegation's proposal (A/CONF.62/C.2/L.3) would be introduced at a subsequent meeting; the introduction had been delayed owing to the indisposition of one of the United Kingdom representatives.

Mr. ROSENNE (Israel) said that his delegation shared the feelings of uneasiness of other delegations concerning the difficulties to which the current working methods might lead. Some problems derived from the vastness of the subject and the essential unity of its component parts. Consequently, it would be advisable for the Committee to concentrate its attention on texts, not on abstract ideas. But it would be premature for the Committee to turn itself into a drafting body or to arrogate to itself functions that properly belonged to the Drafting Committee of the Conference as a whole.

Other problems were caused by the different meanings attributed to such words as "sovereignty", "jurisdiction" and "competence". It would therefore be advisable to take as a starting-point the classical approach, which had the advantage of employing well-tried and well-understood terminology. It would be preferable to consider the material content of proposals rather than their language.

Further difficulties stemmed from the fact that the material before the Committee was voluminous and difficult to follow. Israel had participated in some of the meetings of the Sea-Bed Committee as an observer and had had the advantage of witnessing the preparation of the report to the General Assembly (A/9021), but many delegations had not been so fortunate.

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English

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The CHAIRMAN suggested that there should be a meeting of delegations which supported the traditional concept of the territorial sea as approved at the 1958 Conference, with a view to the preparation of a consolidated text of their proposals. There should also be a meeting of delegations which favoured the plurality of régimes in the territorial sea for the same purpose.

The meeting rose at 11.20 a.m.